

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN DALTON,

No. C 02-4949 SI

No. CR 96-0276 SI

Defendant/Petitioner,

v.

**ORDER DENYING PETITIONER'S
MOTION TO SET ASIDE JUDGMENT
AND TO PROCEED *IN FORMA*
*PAUPERIS***

UNITED STATES OF AMERICA,

Plaintiff/Respondent.

John Dalton has once again moved for this Court to set aside his criminal conviction. This motion is a direct attack on his now final criminal conviction and is properly brought through a petition for habeas corpus. Mr. Dalton is referred to the Court's January 26, 2009 Order, at 3 [Docket No. 659] for instructions on obtaining an order from the United States Court of Appeals for the Ninth Circuit authorizing this Court to consider this, the most recent of his successive habeas petitions. This action is DISMISSED without prejudice to Mr. Dalton filing a petition in this Court after he obtains the necessary order from the Court of Appeals for the Ninth Circuit.

Mr. Dalton has also filed a request to proceed *in forma pauperis*. Petitioner's motion to proceed *in forma pauperis* on appeal is DENIED because he fails to make the prima facie showing required under 28 U.S.C. § 2255 for authorization to file a successive habeas petition. *See* Docket No. 650. This denial is without prejudice to Mr. Dalton's filing a request in the Ninth Circuit Court of Appeals to proceed *in forma pauperis* on appeal. *See* Fed. R. App. P. 24(a)(5).

The clerk shall docket Mr. Dalton's letter and habeas petition dated June 28, 2009.

IT IS SO ORDERED.

Dated: July 10, 2009



SUSAN ILLSTON
United States District Judge